IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

OP.No. 12932 of 1998(M)

PETITIONERS:
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1. **P.MOHAMMED, S/O. MAMMAD,**
   PADIYATH HOUSE, NO. 8/99C,
   PAVUKKONAM, OTTAPALAM.

2. **ABDUL RAHIMAN, S/O. MAMMAD,**
   PADIYATH HOUSE, NO. 8/99D,
   PAVUKKONAM,OTTAPPALAM.

BY ADV. SRI.P.V.MADHAVAN NAMBIAR

RESPONDENTS:
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1. **STATE OF KERALA REP.BY**
   THE CHIEF SECRETARY,
   STATE OF KERALA, TRIVANDRUM.

2. **THE DISTRICT COLLECTOR,**
   PALAKKAD.

3. **THE TAHSILDAR, OTTAPPALAM**

4. **LAND TRIBUNAL, OTTAPALAM.**

BY GOVERNMENT PLEADER SRI.K.G.BHASKARAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.12932/1998

ORDER ON CMP NO.22631/1998 IN OP. NO.12932/1998

DISMISSED

14.12.2007 **SD/- K.M.JOSEPH, JUDGE**

APPENDIX

PETITIONERS EXHIBITS

EXT.P1:- COPY OF THE PURCHASE CERTIFICATE DT. 30.9.1977.

EXT.P2:- COPY OF THE SHOWCAUSE- NOTICE REF:E22/92/DT. 27.8.92.

EXT.P3:- COPY OF THE COUNTER SUBMITTED BY THE PETITIONER.

EXT.P4:- COPY OF THE RELEVANT PORTION OF LIST NO.3 OF VESTED FORESTS IN PALGHAT DISTRICT.

EXT.P5:- COPY OF THE CANCELLATION ORDER DT. 26.6.98 ISSUED BY LAND TRIBUNA, OTTAPPALAM.

ET.P6:- COPY OF THE LETTER DT. 10.7.91 ADDRESSED TO THE TAHSILDAR.

EXT.P7:- COPY OF THE LETTER DT. 4.9.891 ADDRESSED TO THE TAHSILDAR.

EXT.P7(a):- COPY OF THE COVERING LETTER DT. 4.10.91 ADDRESSED TO THE PETITIONER.

/TRUE COPY/

P.A. TO JUDGE

ss

K.M.JOSEPH, J.

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O.P. No.12932 of 1998

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Dated this the 14th day of December, 2007

JUDGMENT

This Original Petition is filed under Article 226 of the Constitution of India. The petitioners' father, late. Padiath Mammad was, according to the petitioners, in possession of 4.89 acres of land in Sy. No.2/1A part of Edakkot Pavukkonam area of Ananganadi Village. According to the petitioners this possession is traced from 1940 onwards. There was suo motu proceedings as S.M.624/77 and Ext.P1 purchase certificate was issued on 13.9.1977. According to the petitioners, the properties were being cultivated and there is a residential building where the petitioners' father was residing along with his children. Upon his death, it is their case, it devolved on his four children including the petitioners and two sisters. Sisters, according to the petitioners, relinquished their rights in favour of the petitioners, and after having sold part of the property to others, it is stated, the remaining has been partitioned among the petitioners. While so, Ext.P2 show cause notice was issued stating as to why patta should not be cancelled. First petitioner submitted Ext.P3 objection. However, by Ext.P5 the Land Tribunal has proceeded to cancel Ext.P1. Petitioners

challenge Ext.P5.

2. I heard learned counsel for the petitioners and the learned Government Pleader.

3. According to the petitioners, it is incorrect to say that the land, which is the subject matter of Ext.P1 is forest land. It is contended by them that a perusal of Ext.P4 notification would show that the land, which is the subject matter of Ext.P1 is not included as forest land. It is further pointed out that Exts.P6 dated 10.7.1991 and P7 dated 4.9.1991 issued by the DFO , Palghat would clearly show that the land is not forest land. It is further pointed out that there is the deposition of the Forest Range Officer, which goes to advance the case of the petitioners that the land is not forest land. But it is pointed out that this deposition is sought to be got over by finding that it cannot be accepted as evidence as his superior officer D.F.O., Palakkad, had informed the Assistant Collector that the land is a forest land. No doubt the Land Tribunal has found that there is a duty cast on the Land Tribunal under instruction from the Land Board to secure no-objection from the forest authorities before an order is passed. It is pointed out that under Section 3 of the Private Forest (Vesting and Assignment) Act private forests vest in the Government. However, Section 6 provides that as soon as may be after the appointed day, the custodian shall cause the boundaries of the

private forests vested in the Government under sub-section (1) of Section 3 to be demarcated. It is submitted that in so far as the notification did not contain the property in question and also Exts.P6 and P7 tends to support the contention of the petitioners and these documents are not considered the order of the Land Tribunal is liable to be interfered with. No doubt learned Government Pleader would submit that actually there is a report dated 28.5.1977 by the authorised officer to the extent that it is forest land. Counsel for the petitioners submits that there is no mention of any such document letter in Ext.P2 notice.

4. I think that the matter requires reconsideration and a fresh decision is to be arrived at after giving an opportunity to the petitioners. Accordingly Ext.P5 is quashed. The Land Tribunal shall make available the copy of report of the authorised officer dated 28.5.1977, which is referred to in Ext.P5 as also copy of the letter dated 10.8.1989 by the DFO to the petitioners, and a fresh decision will be taken in accordance with law within a period of two months from the date of receipt of a copy of this judgment.

The Original Petition is disposed of as above.

(K.M. JOSEPH, JUDGE)

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K.M. JOSEPH, J.

O.P. No.12932 of 1998

JUDGMENT

14.12.2007.